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OCA 87-2519
12 June 1987

MEMORANDUM FOR: Director of Personnel
Deputy Director for Policy, Analysis &
Evaluation/OP
Chief, Administrative Law Division/OGC

FROM: [Redacted] Legislation Division
Office of Congressional Affairs

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SUBJECT: DoD Draft Bill Regarding Overseas
Transportation

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1. Attached is a copy of a draft bill from the Department of Defense authorizing transportation for certain civilian employees overseas. The Office of Management and Budget has requested our comments on this proposed legislation. Accordingly, please review it and forward your comments to me by 25 June 1987.

2. Should you have any questions, you may telephone me on

[Redacted]

[Redacted]

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Attachment

Distribution:

Original(s) - Addressees

1 - OCA/Leg/Subject File: Miscellaneous Personnel

1 - Liaison/OCA [Redacted]

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OCA/Leg, [Redacted] (12 June 1987)

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DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
WASHINGTON, D.C. 20301-1600

2 JUN 1987

Honorable James C. Miller III
Director, Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Miller:

The attached legislative proposal, DOD 100-78, "To amend chapter 157 of title 10, United States Code, to authorize Government transportation for members of the uniformed services civilian employees of the Department of Defense, and the dependents of such members and employees, outside the United States where public or private transportation is unsafe or not available."

Advise is requested as to the relationship of the proposal to the program of the Administration.

Sincerely,


H. Lawrence Garrett, III

Enclosure



WASHINGTON, D.C. 20301-1800

Honorable James C. Wright, Jr.
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

Enclosed is proposed legislation "To amend chapter 157 of title 10, United States Code, to authorize Government transportation for members of the uniformed services, civilian employees of the Department of Defense, and the dependents of such members and employees, in areas outside the United States where public or private transportation is unsafe or not available."

This proposal is part of the legislative program of the Department of Defense for the 100th Congress. The Office of Management and Budget advises that there is no objection, from the standpoint of the Administration's program, to the presentation of this proposal for the consideration of the Congress. The Department of Defense recommends that the proposal be enacted by the Congress.

Purpose of the Legislation

This legislation would authorize transportation for members of the uniformed services, civilian employees of the Department of Defense, and the dependents of these members and employees in vehicles owned or leased by the United States Government, in areas outside the United States in which local public or private transportation is unsafe or unavailable. The legislation would cover situations in which local transportation could not be used because of conditions such as terrorist activity, strikes or other disturbances, or natural disasters. Government transportation would be provided by the most appropriate available means.

The legislation would insert a new section 2637 in chapter 157 of title 10, United States Code. Under new section 2637 the Secretary of Defense could authorize the commander of a unified combatant command to provide for Government transportation outside the United States for members and civilian employees under the commander's jurisdiction and for their dependents. Government transportation could be provided only during the period and within the area for which the unified commander determines that local public or private transportation is unsafe or unavailable. The legislation would also make a conforming amendment to section 1344 of title 31, United States Code, to clarify that the unified commander could provide for government transportation between a member or employee's home and work when local transportation cannot be used.

The authority in new section 2637 of title 10 would closely parallel that already existing with respect to the Department of State in section 2700 of title 22, United States Code. Under section 2700 the Secretary of State may authorize the principal officer of a Foreign Service post "to provide for the use of Government owned or leased vehicles located at that post" to transport Federal employees and their families "when public transportation is unsafe or not available or when such use is advantageous to the Government." 22 U.S.C. § 2700 (1982). In the case of the Department of Defense, a unified commander would be in an appropriate position to make a judgment regarding the need for Government transportation similar to that which the principal officer of a Foreign Service post must make under section 2700.

Currently the Department of Defense does have some authority under section 1344(b)(8) of title 31, United States Code, to provide Government transportation for certain individuals when other transportation is unsafe or unavailable. However, section 1344(b)(8) does not cover the dependents of members and employees; deals strictly with transportation between residence and place of employment; and requires a personal, nondelegable determination by the Secretary of Defense or the Secretary of a military department to provide transportation for a particular member or employee for an initial period of 15 days and for each subsequent period of 90 days.

In areas outside the United States in which continuing terrorist threats or other circumstances may warrant Government transportation for extended periods for members, employees, and their dependents, the authority in section 1344(b)(8) to provide transportation only for members and employees, only between home and work, and only for short periods pursuant to recurring personal secretarial determinations with respect to each member and employee is both too limited in scope and too administratively cumbersome to afford proper protection. Authority such as contained in this legislative proposal, comparable to the authority which is already available to the Department of State under 22 U.S.C. § 2700, is necessary to address the problem.

Cost and Budget Data

The requirement to provide Government transportation under this proposed legislation is subject to changing and unforeseeable conditions in areas outside the United States. Thus, it is impossible to estimate the costs of the transportation with a reasonable degree of accuracy. However, the authority to provide the transportation is to be used only in the limited circumstances previously described in the discussion of the purpose of this legislation. Accordingly, the Department of Defense believes it is not probable that the enactment of this legislation would cause an apparent increase in the budgetary requirements of the Department.

Sincerely,

H. Lawrence Garrett, III

Enclosure

A BILL

To amend chapter 157 of title 10, United States Code, to authorize Government transportation for members of the uniformed services, civilian employees of the Department of Defense, and the dependents of such members and employees, in areas outside the United States where public or private transportation is unsafe or not available.

1 Be it enacted by the Senate and House of Representatives
2 of the United States of America in Congress assembled, That

3 (a) Chapter 157 of title 10, United States Code, is amended
4 by inserting after section 2636 the following new section:

5 "§ 2637. Transportation in certain areas outside the
6 United States

7 "The Secretary of Defense may authorize the commander of
8 a unified combatant command to provide for the use of Govern-
9 ment owned or leased vehicles for transportation outside the
10 United States of members of the uniformed services, civilian
11 employees of the Department of Defense, and the dependents of
12 such members and employees, when public or private transpor-
13 tation is unsafe or not available."

14 (b) The table of sections at the beginning of such chapter
15 is amended by inserting after the item relating to section
16 2636 the following new item:

17 "2637. Transportation in certain areas outside the United
18 States."

1 SEC. 2. Section 1344(c) of title 31, United States Code,
2 is amended --

3 (1) by inserting a comma after "section 3056(a) of title
4 18";

5 (2) by striking out "or" after "section 28 of the State
6 Department Basic Authorities Act of 1956" and inserting in
7 lieu thereof a comma; and

8 (3) by inserting ", or section 2637 of title 10" after
9 "section 8(a)(1) of the Central Intelligence Agency Act of
10 1949".